Mark W. Rutherford, Chairman Indianapolis Larry Landis, Vice Chairman Indianapolis

Richard Bray
Martinsville
Hon. Mary Ellen Diekhoff
Bioomington
Representative Ryan Dvorak
South Bend
Hon. Kelsey B. Hanlon

Public Defender _ Commission _

David J. Hensel
Indianapolis
Senator Eric Koch
Bedford
Hon. Steven P. Meyer
Lafayette
Senator Gregory G. Taylor

Representative John Young

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2019 Public Defender Commission Reform Initiatives

Thank you for taking time to consider the Indiana Public Defender Council's 2019 Legislative Agenda.

General Background on Public Defense Services:

When a person faces the loss of their liberty and cannot afford counsel to defend their rights, the U.S. and Indiana Constitutions require the State to provide counsel. In Indiana, the responsibility for providing that right has been delegated to the counties. The Public Defender Commission (an independent, judicial branch state agency) sets standards for the quality of public defense services. Under current statute, counties are eligible for a reimbursement of 50% for death penalty defense expenses and 40% of felony, juvenile, CHINS, and other cases, excluding misdemeanors, if the county affirmatively chooses to follow the standards.

Urgency for reforms and additional resources for Indiana Counties:

A critical evaluation of indigent defense services in Indiana by the 6th Amendment Center led to the creation of the Indiana Task Force on Public Defense. The Task Force had members from all three branches of Indiana State Government and members from key interest groups. The Task Force studied Indiana's system for over one year and made recommendations for improvements. To respond to those recommendations, the Commission is pursuing the following key items during the 2019 session of the Indiana General Assembly.

1. Base Budget: All counties are permitted to opt into the Commission's reimbursement program. As additional counties choose to participate, a base budget is required to keep the reimbursement rates steady for the counties. In 1996, there were only 5 counties participating. By the end of this year, there will be 63 counties. The Commission is seeking a base budget funding increase to cover the additional counties that have/will join the Commission's reimbursement program.

Fiscal Impact: \$4.47 million/year additional appropriation (Included in HB 1001)

Statutory Change: none necessary

2. Reimbursement of All Case Types (including misdemeanors): The statutory prohibition of misdemeanor reimbursement denies the Commission the authority to enforce the Commission's caseload standards in misdemeanor cases. The result is excessive caseloads in many of the 63 reimbursement counties. Misdemeanors are, by far, the largest volume of cases in the criminal courts in Indiana. The Indiana Supreme Court online data system for 2016 reports a total of 144,136 new misdemeanor cases filed, more than double the number of felony cases. Counsel was appointed in only 36% of misdemeanor cases. The high volume of misdemeanor cases in many courts can result in pressure for speedy dispositions and "assembly line justice." The consequences of a misdemeanor conviction can be significant, including loss of liberty, driving privileges, denial of educational loans, housing, and employment opportunities or professional licenses. Defendants may bear the cost of heavy fees and fines as a result of misdemeanor proceedings, without regard to whether or not the individual is able to afford to pay. The Commission is seeking statutory authority and funding to reimburse all Commission-participating counties for 40% of all case types where a right to counsel exists, including misdemeanors.

Fiscal Impact: \$5.7 million/year additional appropriation (needed to be included in Senate Version of HB 1001)
Statutory Change: language needed in HB 1001

3. Statewide Appellate Office: The Task Force found that in roughly one-third of counties, judges reported that they had difficulty finding competent experienced appellate counsel to appoint for appeals. Appellate representation is a specialized area requiring specific skills, training, experience and standards. Many counties simply do not have appellate specialists. Creation of a statewide appellate office to centralize appellate representation, including criminal, juvenile, CHINS/TPR cases, and other cases eligible for appointed counsel, will remove the challenge for judges in finding qualified appellate counsel and remove the burden on the counties to fund appellate counsel. In addition, it will enable the state to meet its constitutional responsibility to provide competent counsel to all persons who have a right to an appeal. The Commission is seeking statutory authority and funding to create a state appellate office to provide appellate representation where the right to counsel on appeal exists. This office would be empowered to assign appeals to staff attorneys or to qualified attorneys in the counties with the experience and training to provide appellate representation in the type of case assigned.

Fiscal Impact: \$4.9 million/year additional appropriation (needed to be included in Senate Version of HB 1001)
Statutory Change: language needed in HB 1001

4. Regionalization of Public Defense Services: Many rural counties have been experiencing difficulty finding qualified attorneys to appoint for public defender cases. In addition, the attorneys that are appointed in these counties are not being provided with the necessary support services such as investigators and social workers. To address this problem, the Commission is seeking legislation to authorize county executives to adopt an ordinance, in accordance with IC 36-1-7-3, to enter into an agreement with one or more counties to provide legal defense services to indigent persons. This agreement would provide for the administration of indigent defense services through a joint public defender board.

Fiscal Impact: none

Statutory Change: Senate Bill 488 (Passed Senate, awaiting hearing in House)

5. Change to County Public Defense Boards: County Public Defender Boards were initially created to remove public defenders from being at-will employees of judges. The boards were also intended to provide oversight of the quality of public defense services in counties. The Task Force found that many of the county public defender boards were not actively overseeing the quality or cost-effectiveness of indigent defense services in the county, nor were they enhancing the independence of public defenders from the judiciary. The Task Force recommends that the composition of the boards be changed by reducing the two judicial appointments to one judicial appointment and one appointment be made by the Commission.

Fiscal Impact: none

Statutory Change: Senate Bill 488 (Passed Senate, awaiting hearing in House)

For further information about the Task Force, this reform effort, or any matters related to the Indiana Public Defender Commission, please contact staff at information@pdcom.in.gov. We look forward to speaking with you in person as the legislative session progresses, and thank you again for considering these important requests.



Public Defender Fiscal Years 2020-2021 Budget Request

New Juvenile Delinquency Reform	371,558.34
	4,538,489.55 371.558.34

Current Services Increase

Figure 1

Base Budget	\$ 25,750,000
Estimated add'l needed to continue as is	\$ 4,475,430
Total Request	\$ 30,225,430

Misdemeanors

Figure 2

Currently Participating Counties	County Expenditure	Co	mmission Cost
Reimburse Misdemeanors	\$11,635,385		4,654,154.00
Reimburse "Other"	\$2,203,980	\$	881,592.00
Overhead		\$	173,822.42
Total		\$	5,709,568.42

State Appellate Office*

HIMIPO	

		rigure.	
Deputies and Support Staff	\$ 3,767,439.54		
Directors (division and program)	\$	422,542.48	
IT, travel, training, CLE, dues, rent	\$	210,337.50	
Overhead	\$	138,170.03	
Total cost	\$4	,538,489.55	

^{*}Assumes counties continue to pay for pauper transcripts

Juvenile Delinquency Reform**

Javenne Dennquency Reform**	Figur	e 3b
Juvenile Director (1)	\$	134,660.23
Juvenile Appellate Attorneys (2)	\$	197,877.86
Rent, IT, travel, etc	\$	27,708.51
Overhead	\$	11,311.74
Total Cost	\$	371,558.34

^{**}Dependent upon state appellate office

Current Services Increase Figure 1

Base amount includes staffing, projected biennium reimbursements for non-capital cases, and estimated \$503,076 per year for capital cases.

Note 1: Personnel amounts include 3.3% increase in pay/benefits as directed by State Budget Agency

Note 2: Non-Capital amounts do not include the cost of additional counties joining in the next biennium

Note 3: Capital amount determined by averaging last four years of reimbursements

Misdemeanors

Figure 2

-Currently Participating Counties

Includes 42,005 misdemeanor cases and 2,022 other non-reimbursable cases (such as contempt)

Note 1: Expenses are estimated assuming a misdemeanor costs on average \$277/case and "other" cases cost \$1,090/case.

State Appellate Office and Juvenile Delinquency Reform

Figures 3a 3b

The appellate and juvenile project is scalable. The proposed statutory language prohibits taking cases for which the office would lack funding. These cost estimates, when combined with the juvenile appellate defense office, would cover all public defense eligible appeals in the state, including non-commission counties, except Lake and Marion (which will maintain their existing appellate offices and only receive reimbursement from the Public Defense Fund). The cost to handle only commission county appeals, excluding the juvenile project, would be approximately \$3.1 million/year.

Estimated 2019 Commission Appeals less Lake and Marion Counties: 893

Staffing: 1 Appellate Director

1 CHINS/TPR Director & 1 Professional Development Director

18 full-time deputies (25 cases each)

34 part-time contractors (12 cases each)

9 support staff

The juvenile division has 1 director and 2 full-time deputies to handle up to 50 appellate cases in addition to their other juvenile duties, which will provide the necessary total capacity of 908 appeals for all counties, excluding Marion and Lake.

Note 1: Projected cases assume 85% PD appointment rate for adult criminal appeals and 100% appointment rate for public defender eligible non-criminal cases.

Note 2: These costs assume that counties will continue to be responsible for appellate transcript costs; participating counties will receive reimbursement of 40% of those costs through Commission reimbursement.

Note 3: 11 support staff are the amount required to support all of the attorneys, including the juvenile division, per existing commission standards.

Rates used in calculations above:

- Attorneys: \$70,655 (midpoint for Attorney E5 classification) + family benefits
- Part-time contractor attorneys: \$42,393 (half of full-time salary + 20% to account for overhead)
- Division Directors and Program Administrators: \$107,473 (PD Council Non-Exec. Director Rate) + benefits
- Support Staff: \$39,667 (Avg of PAT 1, PAT 2, and EXBB starting salaries) + benefits
- IT costs: \$1,654.92 per person (current IOT direct charges)
- Rent: \$14.75/square foot (avg. of sampling of 3 current state leases) and 175 square feet per employee

January 22, 2019

The Honorable Brian Bosma Speaker of the House Indiana House of Representatives

The Honorable Phil GiaQuinta Minority Leader Indiana House of Representatives The Honorable Rod Bray President Pro Tempore Indiana State Senate

The Honorable Tim Lanane Minority Leader Indiana State Senate

Dear Speaker Bosma, Senator Bray, Representative GiaQuinta and Senator Lanane:

We, the undersigned organizations, write to express our support for the current efforts to address the public defense needs of the citizens of Indiana. We share the commitment to supporting the development of effective public defense systems that assure all those who stand accused have access to the effective assistance of counsel guaranteed in our Constitution. We, therefore, urge the Indiana General Assembly to take the necessary steps to strengthen the state's public defense delivery system.

Few rights are as fundamentally American as the accused's right to counsel when facing the awesome power of the government. Enshrined in the Sixth Amendment, this right is a critical bulwark against government overreach and abuse of power and ensures the protection of other constitutional rights. An effective defender can examine the criminal charge, conduct a critical review of the government's conduct, investigate the allegations, and identify and pursue defenses and mitigating evidence. These actions all help preserve the robust Fourth, Fifth, and Sixth Amendment rights of the greater community.

In Gideon v. Wainwright,¹ the U.S. Supreme Court made clear that the obligation to fulfill the Sixth Amendment's right to counsel at the state and local level rested entirely with the state. States may elect to wholly or partially delegate decisions about the structure, oversight, and funding of public defense systems to their counties, but doing so does not eliminate the states overarching responsibility to assure there are sufficient resources, support, and structure for a constitutionally effective defense.² This is vital as nationally approximately 80% of those facing criminal charges rely upon public defense.

Currently this Constitutional right is being denied in many states. In some places individuals remain incarcerated for weeks or even months waiting for the court to assign them an attorney³; in others the accused are assigned attorneys who are juggling 500, 600, or even 900 cases a year, leaving the lawyers with little more than a few minutes to devote to a case, or are provided counsel who lack the proper

¹ Gideon v. Wainwright, 372 U.S. 375 (1963)

² See e.g. *Duncan v. State of Michigan*, No. 07-242 CZ (2007) ("While it's true the defendants have delegated the responsibility for funding and administering the indigent defense programs to the counties, it does not mean that [the State] defendants are off the hook." Motion to Dismiss hearing transcript at p. 35, May 15, 2007). *Duncan* was a class action case which asserted the state abdicated its responsibility for providing indigent defense to individuals in Michigan by delegating the responsibility to the counties without providing sufficient oversight or funding. While the case was pending, the Michigan legislature created a task force to examine the state's indigent defense system. The resulting report documented that the state's failures to provide appropriate oversight and funding had resulted in a "patchwork quilt" of varied levels of representation and funding. In 2013 the plaintiffs voluntarily dismissed the suit following the passage of legislation aimed to create a new, more extensive, state-directed public defense system.

³ Examples include: Mississippi (http://www.jacksonfreepress.com/news/2018/mar/19/indigent-defendants-denied-counsel-speedy-trials-1/), Missouri (https://www.columbiatribune.com/news/20180221/boone-county-public-defender-waiting-list-approaches-400); and Wisconsin (https://www.wpr.org/justice-delayed-those-who-can-least-afford-it)

training, supervision, or guidelines to provide a meaningful defense.⁴ Indiana is no exception. A 2016 evaluation of indigent defense services in Indiana showed that the state's constitutional obligation to provide counsel at all critical stages of a criminal proceeding is not consistently being met.⁵ This problem is especially true in misdemeanor cases and in those counties which currently do not participate in the Indiana Public Defense Commission (IPDC) reimbursement program.⁶

The benefits of counsel, especially at the earliest stages of the criminal process, go far beyond protection of the accused. Resources saved from unnecessary pretrial detention, wrongful convictions, and excessive or unnecessary incarceration lead to taxpayer savings which can be reallocated to fund other state budget priorities. According to a 2015 report, on any given day there are more than 730,000 people in local jails, resulting in \$22.2 billion in spending on jails. State spending on corrections rose from \$19 million in 1987 to \$49 billion in 2007. Similarly, over that same period both the pretrial incarceration population and the jail populations in Indiana have steadily risen. Whereas in the 1980s and 1990s Indiana ranked nationally as a state with a mid-level of per capita incarceration, over the past 15 years the rates have grown significantly, placing the state among the upper third of the national rankings.

The cost of incarceration is not only felt in the dollars spent on detention, but in the economic and social costs to the community. The state loses tax revenues, as those who are incarcerated are not working and, as research demonstrates, upon their release, individuals who have been convicted of even minor crimes, will earn less over their lifetimes. In addition, the incarceration of one person in a household impacts the entire family. With less income, families are forced to limit spending or may come to rely upon government assistance for food, housing, and utilities. Children experiencing the incarceration of a parent face long-term emotional, educational, and health impacts. A robust, active, and supported public defense system helps to mitigate these harms—facilitating pretrial release of those who do not pose a public safety risk, connecting individuals with needed mental health and substance abuse services, and facilitating considerations of the long-term impact of case decisions.

One of the most prevalent places where the erosion of the Sixth Amendment right to counsel occurs is in misdemeanor offenses. These seemingly minor crimes can lead to significant consequences for the

⁴ See e.g. Fresno, California (https://www.motherjones.com/politics/2015/07/aclu-lawsuit-public-defense-fresno-california/), I ouisiana

⁵ The Right to Counsel in Indiana: Evaluation of Trial Level Indigent Defense Services. The Sixth Amendment Center, Oct. 2016, http://sixthamendment.org/6ac/6AC_indianareport.pdf.

⁷ Christian Henrichson, Joshua Rinaldi, and Ruth Delaney. *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*. New York: Vera Institute, 2015.

⁸ State Reforms Reverse Decades of Incarceration Growth. The Pew Charitable Trusts. https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/03/state-reforms-reverse-decades-of-incarceration-growth

growth

9 According to the Vera Institute's data in 1970 Indiana's rate of jail incarceration per 100,000 residents ages 15-64 was 84 (its pretrial rate for that same period was 56.6), in 1980 the rate was 77.2 (pretrial was 56.3), in 1990 the rate was 177.4 (pretrial was 97.7), in 2000 the rate was 311 (pretrial was 170.2), in 2010 the rate was 408.7 (pretrial was 258.7) and in 2015 the rate was 363.3 (pretrial was 271.7). See Vera Incarceration Trends map, http://trends.vera.org/incarceration-rates?data=pretrial&geography=states (last visited Jan. 8, 2019)

 $^{^{10}\,\}underline{\text{https://www.theatlantic.com/politics/archive/2015/12/how-families-pay-the-never-ending-price-of-a-criminal-record/433641/}$

¹¹ https://www.sciencedaily.com/releases/2018/07/180717102807.htm; https://www.prisonfellowship.org/resources/training-resources/family/ministry-basics/impact-of-incarceration-on-children/

accused and for the state.¹² As former Chair of the Senate Judiciary Committee Chuck Grassley (R-IA) has stated, "When misdemeanor defendants aren't given counsel, no one can challenge the legality of a traffic stop or make the prosecution prove every element of an offense beyond a reasonable doubt. So innocent people may be going to jail. In locations where lawyers are provided at every stage of the process, about 25% of all cases are dismissed."¹³

Further, misdemeanor convictions give rise to serious collateral consequences, with negative repercussions for state budgets, the economy and the workforce. In many jurisdictions, unrepresented accused persons are permitted or encouraged to enter guilty pleas at an initial appearance, notwithstanding that a guilty plea to even a minor charge can trigger significant negative collateral consequences of which the accused may not be aware. According to the National Inventory of Collateral Consequences, individuals convicted of a misdemeanor or felony offense in Indiana face up to 679 collateral consequences for their conviction. Research has shown that the ability to earn a living is the best way to keep someone from committing another crime; however, the excessive barriers confronting those with a criminal conviction make the task of being able to provide for oneself and family nearly impossible. Ensuring an effective public defense delivery system will decrease the number of people burdened with collateral consequences, resulting in more people remaining contributing members of society. As a result, we strongly support efforts to ensure effective and meaningful representation in misdemeanor cases.

The presence of meaningful and effective representation protects the state's coffers, promotes public safety, and increases the community's confidence in its justice system. For these reasons, we urge the Indiana General Assembly to take the necessary steps to strengthen the state's public defense delivery system.

Sincerely,

Mark Holden Chairman, Freedom Partners Chamber of Commerce

Marc Levin Vice President of Criminal Justice, Right on Crime

Shana O'Toole Founder & President, Due Process Institute

Jason Pye Vice President of Legislative Affairs, FreedomWorks

Craig DeRoche Senior Vice President, Advocacy & Public Policy, Prison Fellowship

Justin Stevens State Director, Americans for Prosperity—Indiana

(https://www.opensocietyfoundations.org/sites/default/files/misdemeanor 20090401.pdf)

¹² Minor Crimes, Massive Waste, NACDL 2009

¹³ Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors, hearing before the U.S. Senate Committee on the Judiciary, May 13, 2015 (prepared statement of Senator Chuck Grassley, Chairman), https://www.judiciary.senate.gov/imo/media/doc/05-13-15%20Grassley%20Statement1.pdf

SUPREME COURT

251 N Illínois St | Suite 1600 Indianapolis, Indiana 46204

Office of Judicial Administration

COURTS.IN.GOV

January 9, 2019

Mark W. Rutherford, Chairman Indiana Public Defender Commission 309 W. Washington Street, Suite 501 Indianapolis, IN 46204

Dear Mr. Rutherford:

The Office of Judicial Administration serves as the staff agency to the Indiana Supreme Court, as well as to the Indiana Judicial Conference and its Board of Directors. As head of that agency, I'm writing to convey recent action taken by the Board concerning the 2019 Public Defender Commission Justice Reform Initiative Report.

On December 13, 2018, the Judicial Conference of Indiana Board of Directors unanimously approved a recommendation from its Strategic Planning Committee supporting the concepts contained within the above-mentioned report with the following caveat.

The Committee would recommend the membership of the local Public Defense Boards be increased to five members, allowing the Public Defender Commission an appointment and adding a judicial appointment, rather than removing a judicial appointment. Their suggestion for local board composition would then be:

- three appointments by the criminal and juvenile court judges, with no more than two appointees from the same political party;
- one appointment by the county commissioners; and
- one appointment by the Public Defender Commission.

Thank you for your time and consideration. If you have any questions, please feel free to contact me.

Very respectfully,

Justin P. Forkner

Chief Administrative Officer

Supreme Court of Indiana

cc: Bernice Corley, Indiana Public Defender Council



INDIANA PUBLIC DEFENDER COUNCIL

309 West Washington Street, Suite 401 Indianapolis, IN 46204-2725 Telephone: (317) 232-2490 Fax: (317) 232-5524

MEMORANDUM

TO:

Derrick Mason, Staff Attorney, PDCOM

FROM:

Bernice A. N. Corley, Executive Director

RE:

Submission for PDCOM Board Consideration: IPDC Board position to PDCOM's

tentative legislative agenda

DATE:

September 14, 2018

The IPDC Board received and reviewed the Commission's published tentative legislative/policy reform agenda. In response, the IPDC Board generally agrees with the first 3 priorities, but believes they should be prioritized and amended as follows:

- 1. Reimbursements for Misdemeanors;
- 2. Statewide Appellate Public Defense Office; and
- 3. Allow Regionalization of Public Defense Services.

The IPDC Board is concerned that the Commission's legislative/policy reform agenda does not address some of the most egregious defects in Indiana's criminal system. Among these being: (1) the lack of representation at first appearance and throughout the life of the case and; (2) the practice of some trial courts directing unrepresented accused to negotiate directly with prosecutors and then accepting guilty pleas without defense counsel.

INDIANA STATE BAR ASSOCIATION

Serving the legal profession and the public

The Board of Governors of the Indiana State Bar Association met on February 18, 2019, and by a unanimous vote approved the following Resolution recommended by the Criminal Justice Section Council:

The Indiana State Bar Association endorses the following legislation proposed by the Indiana Public Defender Commission:

- A. The General Assembly should increase the annual budget of the Public Defender Commission by \$4.3 million to enable the Commission to fully reimburse the 62 counties that currently qualify for state reimbursement and the additional counties that may qualify for state reimbursement within the next two years.
- B. The General Assembly should amend IC 33-40-6 to authorize the Public Defender Commission to reimburse counties for defense expenditures in misdemeanor cases, and increase the Commission's budget by an additional \$5.7 million per year to enable the Commission to provide the statutorily authorized state reimbursement to all eligible counties.
- C. The General Assembly should create a Statewide Appellate Defender Office to provide appellate representation in all cases where the person is indigent and has a right to an appeal. The head of the Appellate Defender Office should be accountable to a board independent of the Public Defender Commission.
- D. The General Assembly should authorize counties, in accordance with IC 36-1-7-3, to enter into agreements with one or more other counties to provide legal defense services to indigent persons. This agreement should provide for the administration of indigent defense services through a joint public defender board.

J. Todd Spurgeon

President

Indiana State Bar Association